

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KRISTIN LEAH KINYON, Minor.

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FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CATHRYN HRADOWSKY,

Respondent-Appellant.

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UNPUBLISHED  
December 9, 2003

No. 247999  
Ogemaw Circuit Court  
Family Division  
LC No. 02-012001-NA

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(g). We reverse and remand for further proceedings.

To terminate parental rights, the court must find that at least one of the statutory grounds for termination listed in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1993). Once a statutory ground has been established by clear and convincing evidence, the court shall order termination of parental rights unless the court finds from evidence on the whole record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000). The court's decision is reviewed for clear error. *Id.* at 356-357. A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a firm and definite conviction a mistake was made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520.

Upon review of the record, we conclude the trial court clearly erred in finding that the statutory ground for termination was established by clear and convincing evidence. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The initial petition was filed on May 10, 2002 and at the dispositional hearing on July 25, 2002, the trial court adopted the Foster Care Structured Decision Making Initial Service Plan and Parent-Agency Treatment Plan and Service Agreement (case service plan). The case service plan required respondent to maintain a drug and alcohol-free lifestyle, maintain emotional stability and improve her parenting skills. Only one review

hearing was held after the dispositional hearing. At that hearing, evidence was introduced showing that respondent continued to consume alcohol and that her visits to the minor were causing difficulties with the minor's placement because of the consumption of alcohol. On October 22, 2002, a supplemental petition for termination was filed alleging respondent continued to consume alcohol.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(g), which provides:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

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(g) The parent, without regard to intent, fails to provide proper care or custody for the child and *there is no reasonable expectation* that the parent will be able to provide proper care and custody *within a reasonable time* considering the child's age. (Emphasis added.)

It should be noted that a very short time elapsed between the adoption of the case service plan and the petition for termination. During the eighty-three days between the case service plan and supplemental petition, although respondent had not fully complied with the case service plan in that she continued to consume alcohol, evidence at trial clearly indicated that respondent had actively engaged in the social services required by the plan. This is reflected in the Family Independence Agency's (FIA) termination summary:

On 10/01/02 Substance Abuse Counselor David Wright, NCAC II, with AuSable Valley Community Mental Health wrote that [respondent] was seen at his agency on 10/01/02 and enrolled for treatment of substance abuse and depression. He indicated that she was "appropriate for treatment."

On 10/17/02 . . . David Wright . . . commented that "client has remained abstinent for at least 4 weeks now & is attending AA regularly. She seems to understand the need for total abstinence & making several lifestyle changes for recovery."

On 10/17/02 Denise Peterson, Coordinator of the Alternatives to Abuse Program serving this and other counties wrote a letter stating:

[Respondent] has currently attended 11 group sessions of the Alternatives to Abuse Program. She has a total of 15 sessions left to successfully complete the program.

She consistently arrives on time, is respectful and participates in the group. She is very open to the group process and some of her beliefs and patterns are being positively impacted by her ability to apply what she is being exposed to in-group.

Respondent also submitted evidence of regular attendance at Alcohol Anonymous (AA) meetings between July 24, 2002 and October 21, 2002. This consistent attendance was confirmed by Corinne Jones, co-facilitator of Counseling and Assessment Services of Michigan.

Obviously, respondent's admitted alcoholism justified the trial court's assumption of jurisdiction over the minor child. However, "the purpose of the review hearings provided for by the statute is to determine whether the parents of a child in the temporary custody of the court have managed to "reestablish" a fit home or are likely to do so within the near future." *In re LaFlure*, 48 Mich App 377, 390; 210 NW2d 482 (1973). Here, there was only one review hearing and the newly assigned worker to the case met with respondent on only one occasion before filing the supplemental petition. The evidence submitted established respondent continued to drink but was working on her case service plan to regain custody of her child. That she failed to have total compliance with the case service plan within eighty-three days is not clear and convincing evidence that "there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." MCL 712A.19b(3)(g).

Furthermore, there was sufficient evidence to show that termination of respondent's parental rights was clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). The worker testified that the minor did not want her mother's rights terminated and wanted continuing contact with her. Further, the worker testified that nothing in the reports submitted to the trial court or FIA had determined or categorized the adverse effect of respondent's alcoholism on the minor other than the upheaval associated with the minor's removal from her home and fictive kin placement.<sup>1</sup> For the ten years prior to termination, respondent had raised the minor on her own. During this time, the minor had achieved satisfactory grades, by all accounts was well-adjusted and there was no dispute that the home was more than adequate.

On this limited record before us, the trial court erred in terminating respondent's parental rights to the child.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Hilda R. Gage  
/s/ Kirsten Frank Kelly

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<sup>1</sup> Although the case service plan called for a psychological evaluation and counseling for the minor, neither was initiated or completed.